IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2342 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHIMANBHAI B PATEL

Versus

HEIRS OF MATHURBHAI JESANGBHAI

Appearance:

MR PJ VYAS for Petitioner

MR JITENDRA M PATEL for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 17/02/2001

ORAL JUDGEMENT

1. The petitioner challenges the impugned order dated 5-9-1989 of the Gujarat Revenue Tribunal, at Annexure `D' to the petition, rejecting the revision application of the petitioner and upholding the orders of the lower authorities, by which the claim of the

petitioner under section 32 ((1-B)) of the Bombay Tenancy & Agricultural Lands Act, 1948 was negatived.

2. According to the petitioner, he was entitled to the restoration of survey No. 453/2 admeasuring 1 acre 30 guntha, survey No. 665/2 admeasuring 2 acre 29 guntha and survey No. 220/1 admeasuring 9 guntha from the landlord under section 32 (1-B) of the Act. The Mamlatdar, who conducted the case (Tenancy Case No. 71 of 1984) decided on 12-12-1985 that the applicant was not entitled to the benefits of section 32 (1-B) of the Act for the reason that the tenancy was legally and validly surrendered, as was evident from the order dated 8-5-1956 in case No. 516/55-56 and the name of the petitioner was deleted as a tenant. The appeal filed by the petitioner was dismissed on 21-3-1986 by the Deputy Collector, Bharuch, and that order was challenged by him before the Tribunal.

3. The learned counsel appearing for the petitioner contended that, even after the surrender of tenancy by the petitioner, he had continued in possession, and therefore, he was entitled to become a deemed purchaser. This submission is wholly misconceived. At no point of time till the moment the learned counsel argued, was it ever contended that the petitioner had continued in possession. In fact, this contention is contrary to the very nature of the proceeding which the petitioner had undertaken for getting the benefits of the provision of section 32 (1-B) of the Act. Under section 32 (1-B), where a tenant who was in possession of land on the appointed day and who, on account of his being dispossessed of such land or any part thereof by the landlord at any time before the specified date otherwise than in the manner provided in section 29 or any other provision of this Act, is not in possession of such land or any part thereof and such land or part thereof is in the possession of the landlord or his successor - in interest on the said date and such land or part thereof is not put to a nonagricultural use on or before the said date, then the Mamlatdar shall, notwithstanding anything contained in the said section 29 or any other provision of this Act either suo motu or on an application of the tenant made within the prescribed period, hold an inquiry and direct that such land or, as the case may be, part thereof shall be taken from the possession of the landlord or, as the case may be, his successor - in interest, and shall be restored, to the tenant. Thus, the very fact that the petitioner applied for restoration of possession under section 32 (1-B) shows that he never was in possession. The contention raised for the first

time on behalf of the petitioner is therefore wholly misconceived and untenable.

4. The Tribunal and the authorities below it came to a concurrent finding of fact that the tenancy was legally and validly surrendered on 8-5-1956. On the basis of the evidence on record, the Tribunal found in para 6 of its order that there was a statement on oath by Bhagawanbhai Vithalbhai (father of the petitioner) to the effect that he surrenders this land although he was a protected tenant without any pressure or allurement, and that he was aware of the consequences of the surrender. He had also stated that the government record may be duly corrected after accepting his surrender. The Mahalkari had made a verification of surrender and passed an order thereon, the certified copies of which were produced on the record which was before the Tribunal. The Tribunal found that the surrender had taken place on 30-4-1956 and the formalities of verification and subjective satisfaction about its voluntary nature were duly observed.

5. The Supreme Court while dealing with a similar provision of section 32 (1-B) of the Act as applicable to Maharashtra in Dhondiram Tatoba Kadam v. Ramchandra Balwantrao Dubal, reported in 36(1) GLR 344, held that the effect of surrender was that the person surrendering had ceased to be a tenant. It was held that voluntary giving up of possession did not amount to dispossession as contemplated by section 32 (1-B) of the Act. The dispossession should be either by legal process or physical act of exclusion and it would not include leaving possession voluntarily or by surrender. Therefore, in case of surrender, the requirement of dispossession as contemplated by the provision was not satisfied and the claimant therefore would not become purchaser of the land u/s 32 (1-B) of the Act.

6. The learned Single Judge of this Court in Special Civil Application No.6046 of 1990 (Pravinchandra Harmanbhai Patel v. Chunibhai Govindbhai Patel), decided on 7-12-2000, followed the ratio of the Supreme Court judgement while referring to the earlier judgement of this Court in Bhailalbhai Govindbhai v. Bai Nanduba wd/of Gulabsing Mohansing, reported in 18 GLR 901, in which it was held that, even assuming that the tenant was persuaded to surrender his tenancy since the surrender was not in accordance with the provision of the Tenancy Act and possession had not been obtained either under section 29 or any other provision of the Tenancy Act, the landlord cannot succeed. Obviously, the ratio of the

decision of the Supreme Court would govern the case and the earlier decisions of this Court to the extent that its ratio conflicts with the decision of the Supreme court in Kadam's case (supra) would no longer be a good law, as rightly assumed by the learned Single Judge, while deciding Special Civil Application No. 6046 of 1990.

7. As correctly observed by the Tribunal, the provision of section 5(3)(b) and Rule 2-A of the Old Act No.33 of 1952 were applicable in the instant case, and that whatever was required to be done under those provisions for verifying the surrender and passing orders, was duly done by the Mamlatdar. The Tribunal has rendered its decision on the basis of the relevant material on record and has acted in lawful exercise of its jurisdiction warranting no interference by this Court under Article 227 of the Constitution. The petition is therefore rejected. Rule is discharged with no orders as to costs.

FEBRUARY 17, 2001 [R.K.ABICHANDANI, J.]

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